

Canal Winchester

*Town Hall
10 North High Street
Canal Winchester, OH 43110*



Meeting Agenda

December 17, 2018

6:00 PM

Council Work Session

Mike Walker – Chair

Jill Amos

Will Bennett

Bob Clark

Mike Coolman

Bruce Jarvis

Patrick Lynch

A. Call To Order**B. Roll Call****C. Also In Attendance**

Matt Peoples, Lucas Haire, Amanda Jackson

D. Request for Council Action**RES-18-019**

Development

A Resolution Approving The Mayor's Appointment Of Joseph Wildenthaler To Serve A Four Year Term As A Member Of The Planning And Zoning Commission Expiring On December 31, 2022 ([Resolution](#))

- Request to move to full Council

RES-18-020

Development

A Resolution Approving The Mayor's Appointment Of Joseph Donahue To Serve A Four Year Term As A Member Of The Planning And Zoning Commission Expiring On December 31, 2022 ([Resolution](#))

- Request to move to full Council

RES-18-021

Development

A Resolution Approving The Mayor's Appointment Of Jamoya Cox To Serve A Four Year Term As A Member Of The Landmarks Commission Expiring On December 31, 2022 ([Resolution](#))

- Request to move to full Council

RES-18-022

Development

A Resolution Approving The Mayor's Appointment Of Richard Dobda To Serve A Four Year Term As A Member Of The Landmarks Commission Expiring On December 31, 2022 ([Resolution](#))

- Request to move to full Council

RES-18-023

Finance

A Resolution To Approve The Distribution Of 2019 Bed Tax Grant Funds ([Resolution, 2019 Bed Tax Recommendations](#))

- Request to move to full Council

ORD-18-050

Construction Services

An Ordinance To Authorize The Mayor To Enter Into A Contract With Quality Control Inspection, Inc. For Consulting Services Relating To Construction Inspection For The Period From January 1, 2019 Through December 31, 2019 ([Ordinance, QCI Agreement](#))

- Request to move to full Council

ORD-18-051

Construction Services

An Ordinance To Authorize The Mayor To Amend A Contract With American Structurepoint, Inc. For Consulting Services Relating To Construction Inspection For The Period From January 13, 2019 Through January 13, 2020 ([Ordinance, Agreement](#))

- Request to move to full Council

E. Reports

Matt Peoples -

Lucas Haire -

Amanda Jackson -

F. Items for Discussion

G. Old/New Business

H. Adjournment

RESOLUTION NO. 18-019

**A RESOLUTION APPROVING THE MAYOR'S APPOINTMENT OF JOSEPH WILDENTHALER TO
SERVE A FOUR YEAR TERM AS A MEMBER OF THE PLANNING AND ZONING COMMISSION
EXPIRING ON DECEMBER 31, 2022**

WHEREAS, the Canal Winchester Code of Ordinances section 1139.01 provides for the establishment of the Planning and Zoning Commission; and

WHEREAS, the Mayor of the City of Canal Winchester is required to appoint members to the Planning and Zoning Commission and City Council is required to approve the Mayor's appointment;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

Section 1: Joseph Wildenthaler shall serve a four (4) year term as a member of the Planning and Zoning Commission as appointed by the Mayor expiring on December 31, 2022.

Section 2: That this resolution shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED _____

PRESIDENT OF COUNCIL

ATTEST _____
CLERK OF COUNCIL

MAYOR

DATE APPROVED _____

APPROVED AS TO FORM:

LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

Finance Director/Clerk of Council

RESOLUTION NO. 18-020

A RESOLUTION APPROVING THE MAYOR'S APPOINTMENT OF JOSEPH DONAHUE TO SERVE A FOUR YEAR TERM AS A MEMBER OF THE PLANNING AND ZONING COMMISSION EXPIRING ON DECEMBER 31, 2022

WHEREAS, the Canal Winchester Code of Ordinances section 1139.01 provides for the establishment of the Planning and Zoning Commission; and

WHEREAS, the Mayor of the City of Canal Winchester is required to appoint members to the Planning and Zoning Commission and City Council is required to approve the Mayor's appointment;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

Section 1: Joseph Donahue shall serve a four (4) year term as a member of the Planning and Zoning Commission as appointed by the Mayor expiring on December 31, 2022.

Section 2: That this resolution shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED _____

PRESIDENT OF COUNCIL

ATTEST _____
CLERK OF COUNCIL

MAYOR

DATE APPROVED _____

APPROVED AS TO FORM:

LEGAL COUNSEL

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Finance Director/Clerk of Council

RESOLUTION NO. 18-021

A RESOLUTION APPROVING THE MAYOR'S APPOINTMENT OF JAMOYA COX TO SERVE A FOUR YEAR TERM AS A MEMBER OF THE LANDMARKS COMMISSION EXPIRING ON DECEMBER 31, 2022

WHEREAS, the Canal Winchester Code of Ordinances section 1139.02 provides for the establishment of the Landmarks Commission; and

WHEREAS, the Mayor of the City of Canal Winchester is required to appoint members to the Landmarks Commission and City Council is required to approve the Mayor's appointment;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

Section 1: Jamoya Cox shall serve a four (4) year term as a member of the Landmarks Commission as appointed by the Mayor expiring on December 31, 2022.

Section 2: That this resolution shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED _____

PRESIDENT OF COUNCIL

ATTEST _____
CLERK OF COUNCIL

MAYOR

APPROVED AS TO FORM:

DATE APPROVED _____

LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

Finance Director/Clerk of Council

RESOLUTION NO. 18-022

A RESOLUTION APPROVING THE MAYOR'S APPOINTMENT OF RICHARD DOBDA TO SERVE A FOUR YEAR TERM AS A MEMBER OF THE LANDMARKS COMMISSION EXPIRING ON DECEMBER 31, 2022

WHEREAS, the Canal Winchester Code of Ordinances section 1139.02 provides for the establishment of the Landmarks Commission; and

WHEREAS, the Mayor of the City of Canal Winchester is required to appoint members to the Landmarks Commission and City Council is required to approve the Mayor's appointment;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

Section 1: Richard Dobda shall serve a four (4) year term as a member of the Landmarks Commission as appointed by the Mayor expiring on December 31, 2022.

Section 2: That this resolution shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED _____

PRESIDENT OF COUNCIL

ATTEST _____
CLERK OF COUNCIL

MAYOR

DATE APPROVED _____

APPROVED AS TO FORM:

LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

Finance Director/Clerk of Council

RESOLUTION NO. 18-023

A RESOLUTION TO APPROVE THE DISTRIBUTION OF 2019 BED TAX GRANT FUNDS

WHEREAS, the City of Canal Winchester collects funds from the Bed Tax Grant and distributes them in the form of grant money to various local non-profit organizations; and

WHEREAS, interested non-profit organizations make formal application through the Bed Tax grant program on an annual basis; and

WHEREAS, the Bed Tax Grant Committee has reviewed the applications and made recommendations on how these grant funds should be distributed;

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

SECTION 1. That the Council of the City of Canal Winchester approves and authorizes the Finance Director to distribute grant monies in the amounts listed as "Recommended Funding" on the table attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2: That this Resolution shall be in full force and effect from and immediately upon its adoption.

DATE PASSED _____

PRESIDENT OF COUNCIL

ATTEST _____
CLERK OF COUNCIL

MAYOR

DATE APPROVED _____

APPROVED AS TO FORM:

LAW DIRECTOR

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

Finance Director/Clerk of Council

City of Canal Winchester
Bed Tax Grant Applications

Total Grant Fund Balance as of 11/30/18

\$123,728.29

Fund Balance Commitments (Not Yet Paid Out)

CW Historical Society	\$1,000.00
Destination: Canal Winchester	\$0.00
Dr. Bender Scholarship	\$1,000.00
	<u>\$2,000.00</u>

Fund Balance Available as of 11/30/18

\$121,728.29

Estimated 2019 Revenue

\$70,000.00

2019 Budget Commitments

Destination: Canal Winchester	\$35,000.00
CW Historical Society	\$2,000.00
Dr. Bender Scholarship	\$2,000.00
Bed Tax Grants	<u>\$25,000.00</u>
	\$64,000.00

Organization Making Request	2019 Recommended Funding	2019 Amount Requested	Project Description	2018 Award Amt	2018 Report Submitted?	2017 Award Amt	
The BrockStrong Foundation	\$1,000.00	\$9,900.00	Umpire fees for 2019 BrockStrong Labor Day Baseball Tournament	\$1,000.00	Yes	\$-	See (1) below
CW Area Historical Society	\$2,000.00	\$2,000.00	Designing, printing, and distributing National Barber Museum and Hall of Fame brochures	\$2,000.00	Yes	\$2,000.00	
CW After Prom Committee	\$2,000.00	\$2,000.00	Entertainment and activities for High School After Prom	\$2,000.00	Yes	\$2,000.00	
CW Art Guild	\$1,250.00	\$1,250.00	2019 Mural project - purchase, signage, installation, and removal of murals	\$875.00	Yes	\$1,000.00	
CW Chamber of Commerce	\$1,000.00	\$1,000.00	Running Scared 5K marketing	\$500.00	N/A	\$-	
CW Human Services	\$2,000.00	\$2,000.00	Development and expansion of Community Gardens	\$2,000.00	Yes	\$2,000.00	
CW Labor Day Festival	\$2,000.00	\$2,000.00	Facebook and Columbus Dispatch Advertising for 2019 Festival	\$2,000.00	Yes	\$2,000.00	
CW Lacrosse Association	\$2,000.00	\$2,000.00	Start up costs (goals and uniforms) for HS level lacrosse program	\$-	N/A	\$-	
CW Performing Arts Booster	\$2,000.00	\$2,000.00	2019 Winchester Classic marching band competition expenses - Judges	\$1,000.00	Yes	\$2,000.00	
CW Senior Citizens Club	\$1,200.00	\$1,200.00	Veteran's Day Celebration - pancake breakfast for veterans and families, hall decoration, advertising, supplies, and signage	\$1,500.00	Yes	\$1,500.00	
Friends for Life Animal Haven	\$2,000.00	\$2,000.00	Canal Winchester - City Kitty Round Up - Trap-Neuter-Return-Adoption program	\$1,000.00	Yes	\$1,000.00	
Indians Cross Country Boosters	\$2,000.00	\$2,000.00	The 2019 Dr. Bender 5K Classic - chip timing, race t-shirts, and prizes.	\$2,000.00	Yes	\$2,000.00	
The Miss Canal Winchester Pageant	\$750.00	\$1,500.00	Expenses for the Queens Luncheon to be held on Labor Day	\$-	N/A	\$-	
Total Grants Requested	\$21,200.00	\$30,850.00		\$15,875.00		\$15,500.00	

(1) - Grant application states maximum amount of grant is \$2,000 per requestor

ORDINANCE NO. 18-050

AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO A CONTRACT WITH QUALITY CONTROL INSPECTION, INC. FOR CONSULTING SERVICES RELATING TO CONSTRUCTION INSPECTION FOR THE PERIOD FROM JANUARY 1, 2019 THROUGH DECEMBER 31, 2019

WHEREAS, Council hereby finds and determines that it is in the best interest of the City of Canal Winchester to provide for consulting services relating to construction inspection for private and public capital projects in the City; and

WHEREAS, it is necessary to enter into such agreement immediately to provide for construction inspection;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

Section 1. That the Mayor be, and hereby is, authorized to enter into and execute an agreement with Quality Control Inspection, Inc., herein attached as Exhibit A, to provide construction inspection for private and public capital projects in the City for the Period from January 1, 2019 through December 31, 2019.

Section 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

MAYOR

DATE APPROVED

APPROVED AS TO FORM:

LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

Clerk of Council/Finance Director

Agreement



Contract No.: 110-19-04
Expiration: 12-31-19
Client: City of Canal Winchester
Service: General Project Representation/
Contract Administration

This Agreement made this ____ day of _____, 201__ by and between Quality Control Inspection, Inc ("QCI") and the City of Canal Winchester ("OWNER").

WITNESSETH:

WHEREAS, QCI is in the business of providing consulting services relating to construction inspection

WHEREAS, the OWNER is desirous of engaging QCI to retain consulting services relating to construction inspection and contract administration as more fully set forth below; and

WHEREAS, on _____, 201__ the _____ authorized the hiring of QCI by Resolution # _____; and

WHEREAS, QCI and OWNER have agreed to the terms and conditions for the consideration as more fully set forth below.

NOW THEREFORE, in consideration of the mutual promises and obligations observed and performed by the parties hereto, QCI and the OWNER hereby agree as follows:

ARTICLE I - SCOPE OF SERVICE

QCI shall provide qualified Resident Project Representative(s) ("RPR"), and Contract Administrators ("CA") for use by the OWNER and at the direction of the OWNER's engineer ("ENGINEER") to inspect and consult on work being performed by Contractors hired, or authorized to perform work, by the OWNER.

1. RPR Classifications:

- a.) Class I RPR's shall have the technical practical experience to perform the services as described herein on public works projects of a more typical nature, *i.e.*: Roadway and underground utility construction, new development projects or other types of projects mutually agreed upon by the OWNER and QCI to be of typical nature.
- b.) Class II RPR's shall have the technical practical experience to perform the services as described herein on public works projects of a more specialized nature, *i.e.*: wastewater treatment plants, water plants, water towers, bridges, non-hazard landfills, building construction or other types of work mutually agreed upon by the OWNER and QCI to be of a highly specialized nature.

2. Duties and Responsibilities:

- a.) Liaison: Serve as the ENGINEER's liaison with Contractor working principally through Contractors Superintendent and assist him/her in understanding the intent

of the Contract Documents.

b.) Review of work, Rejection of Defective Work, Inspection, and Tests:

- (i) Conduct on-site observations of the work in progress to determine if the work is proceeding in accordance with the Contract Documents and that completed work will conform to the Contract Documents.
- (ii) Report to the ENGINEER and OWNER whenever QCI believes that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or does not meet the requirements of any inspections, tests, or approval required to be made or has been damaged prior to final payment; and advise ENGINEER and OWNER when QCI believes work should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- (iii) Verify that tests are conducted as required by the Contract Documents and in the presence of the required personnel, and that the Contractor maintains adequate records thereof; observe, record and report to the ENGINEER and OWNER appropriate details relative to the test procedures.
- (iv) Accompany visiting inspectors representing public or other agencies having jurisdiction over the project, record the outcome of these inspections and report to ENGINEER and OWNER.

c.) Interpretation of Contract Documents: Transmit to the Contractor clarifications and interpretations of the contract documents as approved by the ENGINEER.

d.) Modification: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report them with recommendations to ENGINEER and OWNER.

e.) Reports:

- (i) Furnish ENGINEER and OWNER daily reports as required for progress of the work and Contractor's compliance with the approved progress schedule and schedule of Shop Drawings submissions. Included shall be pay items completed, test data, and comments relative to observations of the day's work.
- (ii) Consult with ENGINEER and OWNER in advance of scheduled major tests, inspections, or start of important phases of work.

f.) RPR:

- (i) The RPR is authorized to call to the attention of the Contractor any failure of the work or materials that do not conform to the Specifications and Contract.
- (ii) The RPR is authorized to reject non-specified materials.

g.) Payment Requisitions: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward those with recommendations to ENGINEER and OWNER, noting particularly their relation to the schedule of values, work completed and materials and equipment delivered at the site but not incorporated in the work.

h.) Completion:

- (i) Submit to Contractor a list of observed items requiring completion or correction.
 - (ii) Conduct final inspection in the presence of the ENGINEER, OWNER and Contractor and prepare a final list of items to be completed or corrected.
 - (iii) Verify that all items on final list have been completed or corrected and make recommendations to ENGINEER and OWNER concerning acceptance.
- i.) Additional Duties and Responsibilities: In addition to the duties and responsibilities as spelled out in Article 1 - Scope of Service, at the request of the ENGINEER, the CA shall act as a liaison Officer between the ENGINEER, and the RPR, and shall, under the ENGINEER's authority and control; use best effort to resolve, rectify, remedy, correct and/or modify all field problems of any nature whatsoever, included, but not limited to, making recommendations and/or suggestions of solutions to field problems to the ENGINEER.
- j.) At the written request of OWNER, QCI shall provide an Ohio licensed engineer for the purpose of construction engineering (CE) consulting services as may be required from time-to-time by the OWNER.

ARTICLE II - LIMITATIONS

Except upon written instruction of the ENGINEER or OWNER, the RPR, CA or CE:

- 1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
- 2. Shall not issue instructions contrary to the contract plans, specifications, or contract documents.
- 3. Shall not exceed limitations of the ENGINEERs authority as set forth in the Contract Documents.
- 4. Shall not undertake any of the responsibilities of Contractor, Subcontractor, or Contractor's Superintendent, or expedite the work.
- 5. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences, or procedures of construction unless such is specifically called for in the Contract Documents.
- 6. Shall not issue directions as to safety precautions and programs in connection with the work.
- 7. Shall not be liable for defective work, acts of omission, or operating procedures of the Contractor.

ARTICLE III - OWNER RESPONSIBILITY

- 1. The OWNER Designates Mr. William Sims as its Owner's Representative to coordinate the work of QCI. The Owner's Representative shall be the source of instruction to QCI and shall have the authority to interpret OWNER's policies and procedures as necessary to maintain QCI's work schedule. The Owner Representative shall have the right to

reasonably approve all personnel assigned by QCI.

2. OWNER shall provide QCI with any additional information including approved Final Subdivision Plans, Cut Sheets, Reports, OWNER Standard Construction Drawings and Specifications, Maps and Tax Maps insofar as the information is available or may be secured by the OWNER.
3. OWNER shall bear the cost of furnishing the information indicated above as a cost separate and apart from fees paid to QCI under the terms and conditions of this Agreement, except as may be otherwise noted.

ARTICLE IV - FEES

1. **Fee Schedule:**

- a.) The OWNER shall pay to QCI the fees as set forth in Exhibit "A" attached hereto,
- b.) The fees shall be due and payable on a monthly basis upon presentation by QCI of a detailed invoice.
- c.) QCI shall submit a monthly invoice to the OWNER, specifying the project name, total RPR hours worked, CA hours worked and any additional reimbursable expenses with prior approval from the OWNER.
- d.) Payment shall be made to Quality Control Inspection, Inc., 40 Tarbell Avenue, Bedford, Ohio 44146, or QCI's assigned financial agent within THIRTY (30) days of the dated invoice.
- e.) In the event the OWNER or QCI desires to terminate this Agreement, it may be terminated upon a SEVEN (7) days written notice by the party so desiring to terminate to the other party. QCI shall be paid for work completed and services performed up to the time of notice and in the event it is permitted to complete commenced projects, QCI shall be compensated at the rate provided for herein.
- f.) This agreement shall become effective upon "Acceptance" and remain in effect through December 31, 2019 and shall not be construed to provide for exclusive use of QCI or to guarantee utilization of the above stated services to any level stated or implied.

ARTICLE V - INDEMNIFICATION

1. **Indemnification and Hold Harmless:**

- a.) OWNER shall indemnify, defend, and hold QCI harmless from and against any and all liabilities, losses, claims, damages, suits, actions, judgments, costs, charges and other expenses of whatsoever nature or character arising out of or occasioned by injury or death to any person or persons, or damages to any property, or any other damages whatsoever, except as otherwise may be limited to this agreement, caused by reason of the performance of services hereunder as RPR/CA or otherwise for the OWNER, its servants, agents, employees, contractors, sub-contractors; provided, however, that QCI acted in good faith in a manner which, under the circumstances, a reasonable person might believe to be in or not opposed to the best interests of the OWNER. OWNER agrees not to assert as a defense to its indemnification obligations hereunder any immunity to which it may be entitled under Section 35, Article II of the Ohio Constitution or Sections 4123.74 and

4123.741 of the Ohio Revised Code. This indemnity obligation of OWNER shall not be applicable to the extent QCI is provided coverage under the insurance policy set forth in letter e.) below, or to the extent that this indemnity obligation is prohibited or limited by the laws of the State of Ohio.

- b.) In connection with the indemnification to be provided by the OWNER hereunder, the OWNER shall have the right to designate the attorney to represent QCI, and such attorney may be the Solicitor or Law Director of the OWNER.
- c.) In the event the OWNER shall incur expenses on behalf of QCI hereunder in connection with a claim or matter as to which QCI shall be adjudged to be liable for negligence or intentional misconduct or violation of civil rights, as provided above, QCI shall reimburse the OWNER for such expenses reasonably incurred by it.
- d.) With respect to any claim or matter as to which the OWNER shall undertake to indemnify QCI, no amount shall be paid in settlement thereof unless the OWNER has approved such payment.
- e.) QCI shall at all times maintain in force and effect professional liability insurance with a Limit of liability of not less than \$2,000,000.00 and in a form generally the same as its current coverage provided by Enenstan Insurance Company.
- f.) In the event the OWNER indemnifies QCI hereunder in connection with a claim or matter as to which QCI's insurance carrier has denied coverage under QCI's insurance policy, QCI shall, upon request of the OWNER, assign to the OWNER all of its rights against the insurance carrier arising by reason of such denial.
- g.) As used in this Section, the term "QCI" shall include: employees; agents and sub-consultants of QCI in connection with the performance of services hereunder.
- h.) Notwithstanding any of the foregoing provisions of this Section, this Section shall not apply to any claims that may be asserted by the OWNER against QCI in connection with his performance of services for the OWNER.

ARTICLE VI - NON-SOLICITATION OF QCI EMPLOYEES

1. Solicitation of QCI Employees.

- a.) Information About QCI Employees. OWNER may work closely with employees of QCI performing services under this Agreement. Any information about such employees which becomes known to OWNER during the course of this Agreement and which is not otherwise known to the public, including compensation or commission structure, is a Trade Secret of QCI and shall not be used by OWNER in soliciting employees of QCI at any time. OWNER agrees to protect the confidentiality of such information, to the extent that these terms are permitted under public records law.
- b.) Solicitation of Employees Prohibited. During the term QCI is performing services for OWNER and from one (1) year following the cessation of such services, OWNER shall not directly or indirectly ask or encourage any employee(s) or former employee(s) of QCI to leave their employment with QCI, solicit any employee(s) of QCI or former employee(s) for employment, make any offer(s) of employment to any employee(s) or former employee(s) of QCI or employ any employee(s) or former employee(s) of QCI.

- c.) Injunctive Relief. OWNER agrees and acknowledges that the violation of any of the provisions contained herein would cause irreparable injury to QCI, that the remedy of law for any violation or threatened violation thereof would be inadequate, and that QCI shall be entitled to temporary or permanent injunctive or other equitable relief without the necessity to prove actual damages. In any proceeding by QCI to enforce any of the provision of this Agreement, the prevailing party shall be entitled to reimbursement of all costs and reasonable attorney's fees incurred in such litigation.
- d.) liquidated Damages. OWNER agrees and acknowledges that the actual damages, which would result by any breach by it of this Agreement, are uncertain and would be extremely difficult to ascertain. OWNER therefore agrees to pay QCI a sum equal to thirty-five percent (35%) of the annual compensation previously paid by QCI to any employee(s) of QCI that leave(s), as a result of OWNER's breach of this Agreement, and any damages over and above this amount to which QCI may be entitled by law.

ARTICLE VII - COPYRIGHTS

OWNER acknowledges and agrees that QCI has certain licensing rights to Build A Form® Engineer Report System ("System") that will be utilized by QCI under this Agreement. QCI has proprietary rights in said System, which shall remain the sole property of QCI, and nothing herein shall be deemed to create any rights to OWNER in violation of the rights or interest of QCI or any third party. OWNER acknowledges that the remedy at law for any breach of this section will be inadequate and, accordingly, in the event of any breach or threatened breach by OWNER of this section, QCI shall be entitled, in addition to any other remedies, to any injunction restraining any such breach, without bond or other security being required.

ARTICLE VIII - GENERAL

1. Heading. The headings to the Articles and Sections of the Agreement are inserted for convenience only and will not be deemed a part of this Agreement for purposes of interpreting or applying the provisions of this Agreement.
2. Governing Law. This Agreement will be governed in all respects by the laws of the State of Ohio.
3. Severability. If any provision or paragraph of this Agreement shall be prohibited by law or held to be invalid, such provision or paragraph shall be separable from this agreement without invalidating the remaining provisions or paragraphs hereof.
4. Amendments. During the term of this Agreement, OWNER and QCI may amend this Agreement provided; however, any such amendment must be in writing and signed by both OWNER and QCI.
5. Force Majeure. Neither party shall be liable for its failure to perform hereunder due to any contingency beyond its reasonable control, including acts of God or the public enemy, fire, explosion, accident, flood, drought, embargoes, war, riot, sabotage, action of any kind of governmental authority, whether valid or invalid, strikes, lockouts, labor disputes or shortages or any contingency, delay, failure or cause beyond the parties reasonable control, whether or not of the kind specified herein.
6. Waiver. The waiver by either party of any breach or violation of any provision of this Agreement shall be effective only if given in writing and signed by the waiving party. Any waiver of one breach or violation shall not operate or be construed as a waiver of

any subsequent breach or violation.

7. Entire Agreement. This instrument, including the appendices, exhibits, and attachments hereto, constitutes the entire Agreement between the parties covering the subject matter and supersedes all previous agreements and all proposals and negotiations not expressly set forth herein. No modifications or amendments shall be valid unless in writing and signed by both parties. Where conflicts may arise between this Agreement and the proposal of QCI, this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above mentioned.

WITNESSES:

Mark D Pace
[print witness name]

BARBARA L KLIMCZYK
[print witness name]

[print witness name]

[print witness name]

QUALITY CONTROL INSPECTION, INC.

By: _____
Print Name: Rick Capone
Title: President

CITY OF CANAL WINCHESTER

By: _____
Print Name: Michael Ebert
Title: Mayor

EXHIBIT "A"

1. Fee.

- a.) **Resident Project Representative - Class I** - \$52.50 per hour, per person. Work performed on a Saturday, Sunday, Holiday and/or any hours, which exceed a total of eight hours (8) per day, will be regarded as an extra for which compensation will be in the sum of \$78.75 per hour, per person for each extra hour worked.
- b.) **Resident Project Representative - Class II** - \$59.50 per hour, per person. Work performed on a Saturday, Sunday, Holiday and/or any hours, which exceed a total of eight hours (8) per day, will be regarded as an extra for which compensation will be in the sum of \$89.25 per hour, per person for each extra hour worked.
- c.) **Contract Administration** - \$82.50 per hour, per person.
- d.) **Construction Engineer** - \$86.00 per hour, per person.
- d.) **Mileage Reimbursement** – QCI shall be reimbursed the current IRS "Standard Mileage Rate" for mileage reimbursement for any required driving.
- e.) QCI's rates conform to the following cost principles: Monday through Friday, five (5) eight (8) hour workdays.
- f.) OWNER/Developer's Representative shall contact QCI one (1) hour prior to the start of any scheduled work to terminate any scheduled daily inspections. QCI shall forgo compensation for properly terminating scheduled daily inspection services. QCI shall be compensated for TWO (2) hours per person, for all scheduled inspection terminated before a two (2) hour working period, compensated for FOUR (4) hours per person for all scheduled inspection which exceeds two (2) hours but has not exceeded a four (4) hour working period and compensated for EIGHT (8) hours per person for all scheduled inspection exceeding four (4) hours and not exceeding an eight (8) hour working period.
- g.) Reimbursable expenses; mean the actual expenses incurred directly or indirectly, plus 10%, in connection with the project including: expendable materials, incidental thereto; providing and maintaining field office facilities including furnishings and utilities; reproduction of reports, drawings and specifications and similar project related items.
- i.) All QCI personnel shall have made available to them, when necessary, inspection equipment for all assignments as identified in exhibit "B".

EXHIBIT "B"

Tool Inventory List

Air Temperature Thermometer	Asphalt Thermometer
Calculator	Flashlight
Hard Hat	Level (4'-0)
Level (Torpedo)	Pick
Probe	Ruler (6'-0 Folding)
Safety Vest	Shovel
Spec. Book (City of Columbus & State of Ohio, D.O.T.)	Columbus/ODOT Standard Drawings
Wheel (Measuring)	Cellular Telephone & Digital Camera

ORDINANCE NO. 18-051

**AN ORDINANCE TO AUTHORIZE THE MAYOR TO AMEND A CONTRACT WITH AMERICAN
STRUCTUREPOINT, INC. FOR CONSULTING SERVICES RELATING TO CONSTRUCTION
INSPECTION FOR THE PERIOD FROM JANUARY 13, 2019 THROUGH JANUARY 13, 2020**

WHEREAS, Council hereby finds and determines that it is in the best interest of the City of Canal Winchester to provide for consulting services relating to construction inspection for private and public capital projects in the City; and

WHEREAS, it is necessary to enter into such agreement immediately to provide for construction inspection;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

Section 1. That the Mayor be, and hereby is, authorized to enter into and execute an amendment to the agreement dated January 13, 2015 with American Structurepoint, Inc., a copy of which is attached as Exhibit A, to provide construction inspection for private and public capital projects in the City for the Period from January 13, 2019 through January 13, 2020.

Section 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

MAYOR

DATE APPROVED

APPROVED AS TO FORM:

LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

Clerk of Council/Finance Director

AMENDMENT NO. 3 TO OWNER-ENGINEER AGREEMENT

1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: January 13, 2015
- b. Owner: City of Canal Winchester
- c. Engineer: American Structurepoint, Inc.
- d. Project: Resident Project Representative Services

2. Nature of Amendment

X Modifications to Time(s) for rendering Services

3. Description of Modifications

The duration of services established in 9.01.B of the Agreement is extended for an additional 12 months, with a new expiration date of January 13, 2020.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is January 1, 2019.

OWNER:

City of Canal Winchester

By: _____

Title: _____

Date Signed: _____

ENGINEER:

American Structurepoint, Inc.

By: Julia A. Pithy

Title: ADMIN MANAGER

Date Signed: 12/13/2018